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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,773	08/02/2004	Charles Dana Shipes	SHI-01	4772
23508	7590	01/22/2007	EXAMINER	
LUNDEEN & DICKINSON, LLP			DONNELLY, JEROME W	
PO BOX 131144			ART UNIT	PAPER NUMBER
HOUSTON, TX 77219-1144			3764	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/22/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/710,773	SHIPES, CHARLES DANA
	Examiner	Art Unit
	Jerome W. Donnelly	3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-18 is/are pending in the application:
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.



**JEROME DONNELLY  
PRIMARY EXAMINER**

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 8 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Wells.

Wells discloses a device comprising: a support base (24) a rotatable shaft extending upward, a bearing locator (19) for positioning at least one bearing for the shaft, a transverse member (45) secured to the shaft a training target attached to the transverse member and a device mechanism (64, 59, 56, 69).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wells in view of Nicholson II or Nicholson II in view of Wells.

Wells discloses the device of claims 9-13, substantially as claimed absent the teaching of an electric motor said motor having a variable speed having a local controller for the motor and wherein said motor is reversible.

Nicholson II discloses a physical training device having a motor a circular base an upright support (24) and a training target (32).

Given the above teaching of Nicholson the examiner notes that it is well known and that it would have been obvious to one of ordinary skill in the art manufacture a device such as

Well's to include a reversible variable speed motor having a control; and base such a disclosed by Nicholson II as an alternate driving means controlling means and base members known in the art. Controls reversibility and speed variation is obvious in the art.

The examiner further notes that it would have been obvious to one of ordinary skill in the art to provide a shaft bearing locator a transverse member and a target as disclosed by Well on the device of Nicholson II.

In regard to claim 2, note element (14).

In regard to claim 3, note that the base member of Nicholson is circular.

In regard to claim 4, 5 and 6 the examiner takes Judicial notice that base members and the flat plates therein are known to be manufactured in the form of rectangles polygons and are known to include three outwardly extending legs.

In regard to claim 7, traverse member 45 is incorrectly supported by members 14, 17 and 18.

In regard to claim 15 notes the abstract of Well's, which discloses a device comprising, foam. (Polymer form is known and obvious in the art of striking devices).

Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zagata (5380057).

The method of claims 16-18 is disclosed by, and or made obvious in view of the method of use of the device of Zagata (see the summary of the invention).

Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number (571) 272-4975.

Jerome Donnelly

JEROME DONNELLY  
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read "JEROME DONNELLY".